

## UTAH AIR QUALITY BOARD MEETING

August 6, 2008

168 North 1950 West, Room 101

Salt Lake City, Utah 84116

### FINAL MINUTES

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#### **I. Call-to-Order**

Ernie Wessman called the meeting to order at 1:31p.m.

Board members present: Nan Bunker, Jim Horrocks, Ernest Wessman, Kathy Van Dame, Darrell Smith, Steve Sands, Joel Elstein, and Rick Sprott

Excused: Stead Burwell, Craig Petersen, and Wayne Samuelson

Executive Secretary: Cheryl Heying

#### **II. Date of the Next Air Quality Board Meeting:** September 3, 2008

#### **III. Approval of the Minutes for June 4, 2008 Board Meeting.**

- Jim Horrocks moved to approve the minutes of the June 4, 2008, Air Quality Board meeting. Nan Bunker seconded. The Board approved unanimously.

#### **IV. Final Adoption. Add New Rule R307-123, Clean Fuels and Vehicle Technology Grant and Loan Program and Amend R307-121, General Requirements: Clean Fuel Vehicle Tax Credits. Presented by Mat Carlile and Glade Sowards.**

Mat Carlile, Environmental Scientist at DAQ, introduced DAQ's request to the Board to adopt amendments to the clean fuel vehicle tax credit rule and a new clean fuels and technology program grant and loan rule. Prior to discussing the proposed rules Mr. Carlile provided background information with a PowerPoint presentation followed with Board discussion.

It was asked if there has been an increase in the number of non-approved tax credits because of improper manufacturing and/or installation and if this is creating more of a problem to enforce. Mr. Carlile answered there are more individuals being denied and there is also an increase in those who are questioning the intent of the EPA certification. In addition, the DAQ is only able to administer and control the tax credit. Enforcement of improper installation would go to EPA because it's a federal law that is being violated when a vehicles emission system is being tampered. He added that the highway patrol and inspection and maintenance stations are aware of the situation.

Mr. Wessman added that the main focus of the Board and DAQ is what constitutes a valid installation for the tax credit. What is the standard that needs to be met and how to insure uniformity of compliance and be able to demonstrate that the tax credit program funds is an incentive to switch to an alternative fuel in a manner that actually results in an emission reduction.

Mr. Carlile continued that on May 7, 2008, the Board proposed for public comment a new rule R307-123 and a revision to R307-121. A public hearing was held on June 20, 2008, and the comment period ended on July 1, 2008. A summary of the comments and UDAQ's responses are found in the memorandum to the Board. Staff recommends that R307-121 be adopted as proposed and that R307-123 be adopted with the amendments to the proposed rules.

Mr. Carlile also explained one of DAQ's response to comment that a testing exemption from EPA allows a temporary situation where equipment can be placed on a vehicle in the interim between the times of testing of the product to the point that it's certified.

- Darrell Smith moved to adopt with amendments R307-123 and adopt as proposed R307-121. Nan Bunker seconded. The Board approved unanimously.

**V. Final Adoption: R307-302-3 No-Burn Periods for Fine Particulate. Presented by Mat Carlile.**

Mr. Carlile stated on May 7, 2008, the Board proposed for comment amendments to R307-302-3. No oral or written comments were received. Staff recommends that R307-302-3 be adopted as proposed.

- Steve Sands moved to grant final adoption to amend R307-302-3 No-Burn Periods for Fine Particulate. Joel Elstein seconded. The Board approved unanimously.

**VI. Informational Items.**

**A. Appeal of James Kennon and Dick Cumiskey of Denial of Intervention in Intermountain Power Project Unit 3 Matter. Presented by Fred Nelson.**

Fred Nelson, of the Attorney General's Office and counsel to the Board, updated the Board on Mr. Kennon, Mr. Cumiskey, and Save Our Air and Resources request for intervention in the Intermountain Power Project Unit 3 hearing, which the Board denied on the basis of timeliness. Prior to the signed written order being issued by the Board, Mr. Kennon filed a request for reconsideration to the Board. Mr. Kennon was informed that a written order needed to be issued before reconsideration by the Board. Once the written order was issued Mr. Kennon made the determination that instead of asking for reconsideration from the Board he would appeal to the Court of Appeals.

Under the appellate procedures there is a process where a party can ask for a summary disposition, if the case is fairly simple on the issues. Mr. Nelson filed a motion for summary disposition on the same day the court indicated it was going to entertain considering this for summary disposition and ask for comment by the parties. Mr. Kennon has until August 28<sup>th</sup> to file a reply to the courts response. Mr. Nelson further explained the summary disposition is asking the court to uphold the Board decision and is a possible dismissal of the case. The court will either uphold the Board decision on summary disposition or will consider it for full briefing. If it is considered for full briefing, the court will potentially remand it back.

**B. Working 4 Utah. Presented by Cheryl Heying.**

Ms. Heying informed the Board that on August 4<sup>th</sup> the State of Utah went to a four 10-hour work day schedule. The Department of Environmental Quality will operate Monday through Thursday from 7:00 a.m. to 6:00 p.m. Also, air monitoring data will still be collected 24 hours a day seven days a week throughout the state with updates and action calls through the weekend.

**C. Local Health District Representation. Presented by Cheryl Heying.**

Ms. Heying explained the importance and coordination the state has had with local health districts in making sure there is open communication and participation at Board meetings. Several DEQ Boards have a member of local health districts on their Board, which DAQ does not. At an opportune time when the statute can be opened, it is DEQ's commitment to have a local health district officer sit on each Board. Among local health districts Lloyd Berentzen of Bear River Health was selected as their representative and has attended DAQ Board meetings for over a year. Mr. Berentzen leaves this position which the districts have now given to Lewis Garrett of Davis County Health. Mr. Garrett was then introduced to the Board.

Ms. Heying continued that one of the ways to more formalize the relationship is to have a place at the Board table for a local health district officer to give comment in Board discussion, but they could not give motions or participate in voting.

After Board discussion, including counsel of Mr. Nelson, the Board asks Ms. Heying to have a resolution prepared for vote by Board members at the next meeting requesting such a person be given an advisory seat at the Board table.

**D. Air Toxics. Presented by Robert Ford.**

**E. Compliance. Presented by Jay Morris and Harold Burge.**

Jay Morris, Minor Source Compliance Manager at DAQ, explained that Geneva Rock Products' violation at point of the mountain was the result of permitting issues with severe exceedences of production limits over a 12 month period. Any time a source exceeds a production limit the DAQ will go after their economic benefit, which was the majority of the penalty amount.

**F. Monitoring. Presented by Bob Dalley.**

Bob Dalley updated the Board on monitoring data and explained that some breaks in the graphs for some stations are because some sites only operate every three days or because of equipment failure.

Ms. Heying was asked to go over the dates on the state's determination for the ozone standard and the dates for EPA's response to the PM<sub>2.5</sub> submitted in December 2007.

The effective date for the PM2.5 standard was December 18, 2006. DAQ submitted recommendations to EPA on December 18, 2007, based on 2004-2006 monitoring data. A response letter from EPA is expected and DAQ will have 120 days to respond and EPA will also be accepting public comment during this time for 30 days. At that point EPA will take the comments and make the final designations no later than December 2008. In addition, after DAQ's designation request was submitted, EPA came out with an algorithm addressing which counties should be included.

The ozone standard was adopted March 27, 2008; the effective date was May 27, 2007; and state recommendations are due March 2009. DAQ's recommendations will be based on 2006-2008 monitoring data. Final designations will be made March 2010 by EPA based on 2007-2009 monitoring data.

It is recommended that DAQ update the Board on EPA's response letter and DAQ's response at a future meeting.

Mr. Sprott informed the Board that the Supreme Court of Utah is scheduled to hear oral arguments in the Sevier Power Company case on October 9, 2008.

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Meeting was adjourned at 2:23 p.m.

Minutes approved: September 3, 2008